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Situation of human rights in Haiti

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report, accompanied by recommendations, on the situation of human rights in Haiti, prepared by Mr. Adama Dieng, independent expert, in accordance with Commission on Human Rights resolution 1998/58 dated 17 April 1998.

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Annex

Report on the situation of human rights in Haiti prepared by Mr. Adama Dieng, independent expert

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I. Introduction

1. In his report on developments in the human rights situation in Haiti to the General Assembly at its fifty-second session, the independent expert had expressed concern at the deteriorating political, social and economic situation and at the possible consequences of the departure of the United Nations Transition Mission in Haiti (UNTMIH), given the fragile state of Haiti's young democracy. His view, which remains essentially unchanged, is that the Haitian National Police has not yet attained the level of professionalism that would enable it to maintain law and order on its own. He had therefore recommended that the United Nations should seek some way of continuing to provide assistance in the event that it was required to withdraw definitively. In that connection, he welcomed the initiative taken by the Secretary-General to recommend to the Security Council the establishment of a United Nations Civilian Police Mission in Haiti (MIPONUH) with a mandate to assist the national authorities by supporting and contributing to the professionalization of the Haitian National Police. The Security Council accepted this recommendation and adopted the relevant decision in its resolution 1141 (1997) dated 28 November 1997.

2. In recognition of the relationship between peace and development, the Secretary-General decided to maintain a direct link between MIPONUH and the mechanism for the coordination of United Nations development agencies by making the United Nations Development Programme (UNDP) Resident Representative the deputy of his Representative in Haiti, who is head of the mission. The inclusion of a development cooperation component among the objectives of the peacekeeping mission in Haiti is certainly an original approach. Quite apart from its originality, the approach is a constructive one in that it takes into account the need to improve the living conditions of the population through the implementation of small carefully designed local projects with popular participation.

3. Since then, the independent expert has paid two visits to Haiti (the first from 26 February to 2 March 1998 and the second from 9 to 15 August 1998). During the course of his various missions, the expert met regularly with the main actors, including President René Préval, Gérard Pierre Charles, leader of the Organisation Politique Lavalas (OPL) and former President Jean-Bertrand Aristide, leader of Fanmi Lavalas. He had meetings with the Minister of Justice, the President of the Senate and of the National Assembly, the Minister for Foreign Affairs, the Director-General of the Haitian National Police, the Director of the National Institute of Agrarian Reform (INARA), the Inspector General of the National Police, the coordinator of the reform of justice project, and with human rights non-governmental organizations, including the Plate-forme des organisations haïtiennes des droits de l'homme and Kay Famm.

4. The independent expert also held fruitful discussions with the Special Representative of the Secretary-General for Haiti, the Executive Director of the International Civilian Mission in Haiti (MICIVIH), the Deputy Executive Director, the UNDP Resident Representative and Deputy Resident Representative, representatives of international agencies, and the chief technical adviser on the project to professionalize the National Police. He visited Gonaïves, Aquin and Cap Haïtien. He had the opportunity in these various localities to hold discussions not only with judges and Government commissioners but also with individuals in custody in police stations, convicted prisoners and persons held in preventive detention in the respective prisons.

5. The present report summarizes the findings of the two missions and the recommendations made by the independent expert. It should be noted that the report submitted to the Commission on Human Rights at its fifty-fourth session had not been published. The expert therefore considered that it might be useful to reproduce here most of the comments that remain relevant.

II. Social and political context

6. Since 8 June 1997, President Préval has been faced with an impasse in the Parliament, which on two occasions has refused to approve the nomination of the prime minister-designate. The first nominee was Mr. Ericq Pierre and the second Mr. Hervé Denis. The absence of a prime minister for fourteen months has had an adverse impact on the human rights situation. It should be noted that as of 20 October 1997, the Prime Minister, Rosny Smarth, and several ministers have ceased on an interim basis to exercise their functions. This has resulted in a situation in which those ministers who remained in their posts are now responsible for more than one ministry, with all that that implies for good governance, notwithstanding their tireless efforts. Quite apart from the disastrous effects which the institutional crisis has had on economic activity, it is clear that the present situation is hardly reassuring to private investors. The purchasing power of Haitians is being eroded daily, inflation is raging, prices of basic foodstuffs are steadily rising and both the process of modernization of the State and the pace of economic reforms are slowing. It is therefore of the utmost importance to overcome the crisis without delay. Overcoming the crisis is both an imperative and a

requirement for pursuing the process of democratization and strengthening the protection of human rights. Upon his departure from Haiti, the expert was of the opinion that a consensus was within reach that would pave the way for the confirmation of a third prime minister-designate, namely, professor Jacques Edouard Alexis, who is currently Minister of Education.

7. It is regrettable that the government crisis which led to the collapse of the State apparatus made it impossible to take vigorous action aimed at the gradual implementation of economic, social and cultural rights, including the right to health and the right to education. Likewise, the transformation of society is still being hampered by the weakness of its institutions, and it suffices in this regard to look at the deplorable situation of women's rights, the violations of the rights of children, the impunity enjoyed by those who commit serious human rights violations, the lack of professionalism of the National Police and the deterioration of conditions in prisons. It should be noted, however, that some progress has been made in the process of reform of the judiciary.

III. Combating impunity

8. The weakness of the judicial system remains a cause of serious concern, especially since the population continues to call with increasing insistence for the trial of the alleged authors of the massacres at Raboteau (perpetrated in 1994) and at Jean-Rabel (perpetrated in 1987). In other words, it is the question of the impunity of the authors of serious violations of human rights as well as the right to reparation, restitution and rehabilitation of victims which are currently at the centre of a wide-ranging public debate in Haiti.

9. It should be pointed out that most human rights organizations in Haiti have expressed concern over the attitude of officials of the Ministry of Justice, whom they accuse of a lack of transparency in the handling of the issue of reparations. The first complaint is that the Ministry, instead of implementing the recommendations of the National Commission of Truth and Justice, has established an Office of Prosecution and Follow-up for Victims (BPSV). The organizations regret that non-governmental organizations (NGOs) have not been involved in the management of that Office, which apparently does not have procedures for the settlement of cases. For his part, the Minister has reaffirmed his determination to do everything possible to work with all human rights protection organizations which have consistently supported the efforts of the Haitian people. He pointed out that the establishment of BPSV is a timely response to the claims of the relatives of victims and of victims themselves, who are frustrated at the State's delay in adopting measures to provide for reparations. Insofar as the Ministry of Justice favours modalities for collective reparations in the form of legal and medical assistance and economic and social reinsertion, the independent expert recommends much broader cooperation, or even a partnership with NGOs in the search for solutions to the problem of reparations. Such an approach is all the more constructive as, during the period of the *coup d'état*, numerous networks had been put in place by different sectors of civil society to provide assistance to victims. In this connection, the independent expert urges the international community to pay greater attention to and show greater interest in the question of reparations and to support the efforts being made to provide moral and material reparations. Thus far, the international community has been unwilling to even listen to any talk about victims. It should take account of the fact that Haiti is today facing a problem of political stability and of the reconstruction of a social fabric which has been literally torn apart. It must therefore avoid the temptation to view the situation in purely economic terms and remember that the Haitian people have lived through the tragedy of 40 years of dictatorship, that they have never benefited from any form of reparation whatsoever, not even a symbolic reparation in history and civic education text books. It is gratifying to note that the Haitian Government is convinced that "the damage suffered calls for reparations at the therapeutic, legal, economic and symbolic levels, but that reparations have true meaning only if they help to re-energize institutions and society". Note should also be taken of the support which MICIVIH provides to organizations that assist victims of the *coup d'état*. It has been entrusted by BPSV with the task of disseminating the report of the National Commission of Truth and Justice (CNVJ), a recommendation that had been made long ago by the independent expert.

10. The affair of the documents seized from the headquarters of the Haitian Armed Forces and of the Front pour l'avancement et le progrès Haïtien (FRAPH) by the Americans, to which the independent expert already alluded in his report contained in document E/CN.4/1997/89 and in his oral presentations to the Commission on Human Rights in April 1997 and in April 1998 continues to cause controversy. The Executive Director of MICIVIH, Mr. Colin Granderson, alluded to this during one of his recent visits to Gonaïves. In response to a question by human rights defenders, he declared publicly that it was important to return these documents in order to help shed light on cases currently before the courts.

11. Among these cases is one that deals with the Raboteau mas ..e, another matter of obvious interest, as much to the authorities as to the population. The trial of the perpetrators of that massacre, which some parties unhesitatingly refer to as the trial of the *coup d'etat* of September 1991, is symbolic for more than one reason. The success of the struggle against impunity largely depends on the way in which this trial is conducted. It is consequently important for the United States of America to return the confiscated documents, intact and without delay, since they may well prove to be an invaluable source of information for the proper administration of justice.

12. No effort should be spared in identifying, pursuing, and trying the perpetrators of these abominable crimes, who, if they are found guilty, should be punished in accordance with the law and with respect for the principles of human rights. In essence, this is a matter of successfully conducting a trial during which the guarantees set forth in article 14 of the International Covenant on Civil and Political Rights will be scrupulously observed. It should not be necessary to invoke the responsibility of States to conduct exhaustive inquiries into violations of human rights in order to convince the United States of America to return the confiscated documents intact, thus allowing Haiti to fulfil its obligation to procure justice for the victims of the *coup d'état* of September 1991.

13. The independent expert invites the United States of America, a country with a time-honoured legal tradition, to fulfil a fundamental duty by contributing to the pursuit of truth. He furthermore urges all concerned States to assist in the extradition of the officers accused of participation in the Raboteau massacre – thereby respecting the primacy of law. During his visit in August 1998, the independent expert learned that the requests for extradition of the superior officers had been turned down on legal grounds. He therefore recommends that assistance should be furnished to the Haitian Government with a view to maximizing its chances of obtaining a favourable response to its extradition requests.

IV. The Haitian National Police

14. Although the National Police has made considerable progress during the past two years, the many human rights violations committed by its agents remain cause for concern.

15. The Mirebalais affair, named for a town located on the central plateau, exemplifies the atmosphere of violence prevalent in that region, which smacks of political violence. It also illustrates the shortcomings of the Haitian National Police. On 5 February 1998, two persons, one of them a police commissioner, were killed during incidents in which members of a popular organization known as "Mete lòd nan dezòd", which has close links to the Lanfanmi Lavalas party, clashed with members of the Mouvement des Paysans de Papaye. The independent expert has paid close attention to this incident, because it conceals the seeds of a conflict that should be averted before it spreads throughout the central plateau and beyond. Steps have of course been taken by the Minister of Justice, who suspended the senior judge and the government commissioner who were suspected of involvement in the murderous incidents that transpired in Mirebalais. But consideration must urgently be given to the conduct of the National Police, and, more pointedly, to the Compagnie d'Intervention Rapide et de Maintien d'Ordre (Rapid Intervention and Law Enforcement Unit). This new organ, under the authority of the Director-General of the Haitian National Police, allegedly conducts itself in a corporatist manner reminiscent of the troops of the former Haitian armed forces. Haiti has had no army since President Aristide took the decision to disband it. That step was hailed by the Haitian people, who then witnessed the disappearance of an institution they had traditionally regarded as an occupying army. In any case, these events must be taken very seriously, and should trigger reflection about the restoration of peace and the maintenance of order.

16. In his report E/CN.4/1997/89, the independent expert commended the establishment of the Office of the Inspector-General of the Haitian National Police (IGPNH). The Chief Inspector-General of the Haitian National Police, Me Eucher Luc Joseph has since submitted an evaluation of operations spanning the period from November 1995 to December 1997. That evaluation report highlights the considerable efforts that have been made to clean up the police force, despite the many difficulties encountered. The functions of the Inspector-General's Office are as follows:

(a) To conduct administrative investigations;

(b) To inspect and monitor units of the National Police;

(c) To counsel government authorities, and in particular the Minister of Justice and the Director-General, concerning what measures should be taken to ensure the evolution of the new National Police within a context of respect for matters of principle. During the period under review, 2,278 files were turned over to the Inspector-General's Office, and have been broken down as follows:

- 468 cases of human rights violations, 234 of which have been reviewed;

- 188 cases of fraud or theft, of which 86 have been reviewed;
- 32 cases involving drugs, of which 15 have been reviewed;
- 1,392 cases of violations of rules, of which 1,051 have been reviewed;
- 187 miscellaneous complaints.

Many cases of corruption have occurred, none of which have been addressed.

17. The most serious offences account for 33 per cent of the files received; following their review, the contracts of 200 police officers were revoked, and the files of 66 police officers dismissed for disciplinary and criminal offenses were turned over to the courts. Those cases have been broken down as follows: crimes (assassinations, murder and attempted murder, voluntary homicide), 14; thefts, 17; gratuitous violence and physical abuse, 6; embezzlement or extortion, use of counterfeit money, 5; illegal searches, 3; misuse of firearms, infliction of gunshot wounds, 3; other (insulting behaviour, bribing witnesses, use of narcotics), 13.

18. These figures demonstrate the determination of the Inspector-General's Office to clean up the new National Police before it develops habits which could prove harmful to human rights. The successes of that office are worth emphasizing, in view of the many difficulties and obstacles encountered by investigators. These include shortage of human resources; the pressure brought to bear on investigators, including death threats against them and their families; the lack of support from one sector of the hierarchy, which has left it to the investigators alone to determine responsibility in particularly serious cases; and problems of a logistical nature, especially the shortage of vehicles and computers and the absence of a communications system. But the greatest obstacle is the defects in the Haitian justice system, which cause frustration in the Inspector-General's Office. The 66 files turned over to the courts since November 1995 concerning police officers implicated in serious offences who have not yet been tried or convicted, serve as an illustration. Even worse, police officers brought before the courts for human rights violations have been released by lenient judges. The Inspector-General, deeply concerned by this situation, expressed concern as to how the members of his Office will be able to handle sensitive files with firmness and determination over a period of months while facing the likelihood of near-certain impunity for the police officers who have committed or abetted these reprehensible acts. He then added the following statement, which the independent expert endorses: "Judicial impunity and complicity constitute an obstacle to the process of cleaning up the Haitian National Police as well as to the maintenance of order." In other words, real synergy between the justice system and the police is essential if the protection of persons and property is to be effectively enhanced.

19. The problems of the National Police are exacerbated by the economic and political climate, and by the weakness of the State. It must nonetheless be acknowledged that this young institution has made considerable progress. That in no way, however, diminishes all that remains to be done to strengthen the National Police and to cultivate a rapport between this arm of the justice system and the population it serves. The Haitian people are the real and natural judges of this situation. At the moment, they are keeping close and meticulous watch on their police force, and have a subtle appreciation of the difficulties in establishing it. It appears that the population has very high expectations of its police. It hopes to see the emergence of a police force which will serve the community and foster its development. This concept naturally comprises the technical role of the police force, and the recognized need to maintain order and to crack down on crimes and offences. As the Director-General of the National Police has noted, the task is not an easy one, and hence there is a need to define in plain terms the role of a police officer for both the present and the future. How can the police force be trained so as to meet the expectations of the people? It should be recognized that most police officers do their jobs in a relatively acceptable manner, in accordance with the methods available to them. The independent expert is nonetheless disturbed by the excesses of some police officers who have been implicated in cases of torture, abuse, corruption, and narcotics trafficking. More than 150 cases of inhuman and degrading treatment were recorded between January and May 1998. In many cases, MICIVIH observers have noted marks on the bodies of detainees abused during custody, which strengthens the credibility of the allegations. As for summary executions, at least four cases have been reported in Port-au-Prince, of gang leaders said to have resisted arrest. According to the Director-General of the National Police, the rampant crime and lawlessness in Cité Soleil, a suburb of Port-au-Prince, was formerly a serious problem for the police. He acknowledges that the problem has now been eradicated and that Cité Soleil is no longer a hub of crime and lawlessness. He also asserts that that result was achieved by way of operations conducted by specialized police units, and that those units did not carry out summary executions when they arrested gangsters. The expert nonetheless requested an investigation into those incidents:

among others, the case of a gang leader who was confirmed, by credible witnesses, to be alive at the time of his arrest.

20. In any case, it must be acknowledged that the conduct of the Haitian National Police is generally positive. Regrettably, however, police officers identified as responsible for human rights violations, corruption and other crimes have been promptly released by judges, although the files prepared by the Inspector-General's Office contained ample proof. Such releases are apparently carried out by corrupt judges who receive sums of money from police officers brought before them. That kind of complicity between venal judges and police officers naturally causes frustration in the ranks of the National Police. This situation is even more reprehensible in view of the fact that, to date, approximately ten police officers have been killed in 1998.

21. The expert regrets that the Haitian legislature has failed to review the observations formulated by him in his report for 1997 (A/52/499) with respect to the draft law on judicial reform, and in particular those parts which concern the non-applicability of statutory limitations to crimes and offences, and the relationship between the principle of equality and the rule concerning the period of limitation. The interim provision regarding the permanent departure of the United Nations contingent – which the expert had criticized – has been amended as follows: "Article 10: As from the date of publication of this law, the State assumes the obligation to procure the departure of all foreign armed forces, and will take all necessary measures to ensure that no armed force other than the Haitian National Police exists in the national territory." Although the reference to the United Nations contingent has been deleted, the article contains an ambiguity which the expert mentioned to President Préval, the Chairman of the Chamber of Deputies and the foremost political leaders. The opinion he has formed in the light of those talks is that the provision in question has no effect whatever on the presence of the United Nations Transition Mission in Haiti (UNTMIH), which must remain until the National Police has acquired the necessary expertise to permit it to perform its duties fully and effectively. That is to say that withdrawing UNTMIH would constitute not only a major obstacle to enhancing the professionalism of the National Police, but also a threat to the security of the Haitian State. It should not be overlooked that the absence of a Government for what will soon be fifteen months has had an impact on the conduct of some police officers. A marked trend toward corruption and involvement in drug-related incidents has in fact been observed. Seven police officers misappropriated 450 kilograms of cocaine that had been seized on 8 May 1998. Two have been arrested, but the other five remain at large. It is even feared that police elements may be linked to political groups, and in particular to anti-democratic sectors. Nostalgic for the dictatorship and profiting from the crisis, they are vigorously active in the field. As for the Haitian people, they consider that status quo to be a sign of irresponsibility on the part of their representatives. In such an atmosphere, it should not be surprising that the police force has attracted the interest of many political sectors. It is clear that each sector would like to take control of the armed branch of the State; that being impossible, the police force has become the target, and police officers are the victims of aggression.

V. The judicial system

22. As the expert had already observed, the greatest challenge faced by Haiti is to build a State ruled by law through the establishment of a modern, effective, independent, democratic, equitable judicial system available to all. He therefore contributed his views and recommendations to the study carried out by the national Preparatory Commission for the Reform of Justice. In this regard, he wishes to draw attention to the efforts made by the European Commission, which enabled the Preparatory Commission to benefit from the contributions of foreign experts whose presence in Haiti was greatly appreciated by Ms. Florence Elie, Chairperson of the Commission. This eminent Haitian jurist and human rights activist knew what was at stake when she stated: "Reform could not succeed unless two conditions are met: it must be purely Haitian, despite the need for external support, and it must meet the needs of all social groups". The independent expert shares her view that "despite social progress during the past decade, the judiciary remains part of an exclusionary State system characterized by a judicial system which is inaccessible, ineffective and slow and which fails to respect human rights. As a result, the majority of the population is essentially without legal services. Guaranteeing respect for and protection of fundamental rights is, therefore, one of the major goals of the reform". The Preparatory Commission, which was established in February 1997 pursuant to a recommendation of the National Commission of Truth and Justice, has submitted its report to the Ministry of Justice. The report may be described as a general policy document on the reform of justice which contains proposals for reform of, *inter alia*, the legal system and a strategy for action accompanied by a timetable. It focuses on five topics: (a) the fundamentals of reform; (b) civil society's primary requirements for the administration of justice; (c) responses to requests from civil society; (d) a strategy for action; and

(e) the agents of the change. On 6 July 1998, members of the Commission, donors and other partners held a fruitful discussion of the various focuses of the report and proposals for practical action. It should be noted that the general policy document assigns a key role to civil society. The independent expert hopes that he is not mistaken in citing this as proof that in Haiti, nothing will ever again be the same and that members of civil society will henceforth have a voice in all matters related to the administration of justice. It is true that the reform of the justice system is the subject of publicly-made commitments made by political figures and organizations of civil society and is based on the 1987 Constitution. But talk is not enough; it is time for action. The matter is urgent, and delay would pose a risk in view of the number of detainees in Haitian prisons. At present, out of a prison population of approximately 3,500 detainees, 85 per cent are being held in pre-trial detention while 15 per cent are convicted prisoners. This is certainly a very disturbing situation which has, moreover, come to the attention of the Ministry of Justice, which has established an Office of Pre-trial Detention Supervision at the National Penitentiary in Port-au-Prince and plans to extend the programme to other detention centres. On the instructions of that Office, justices of the peace visited the prison regularly between 29 May and 8 July, and 190 of the 300 prisoners whom they interviewed were released. According to a MICIVIH memorandum, several judges were surprised to discover detainees for whom they had issued arrest warrants in 1997 and whose cases had never been heard or brought to trial. Equally praiseworthy is the excellent work of MICIVIH, which is helping to correct and update the information contained in individual files, prison registers and computerized lists. However, it must not be thought that this Office will solve the problem of long-term detention, which is the result of shortcomings in the judicial system itself. In view of the magnitude of this task, the expert strongly recommends that the international community should spare no effort to ensure implementation of the plan of action for the justice system. It is important to remember that peace, democracy and development require the establishment of an independent judicial system accessible to all. Until the justice system is made a priority, there can be no hope of satisfactory results for the economic and social development of the Haitian people.

VI. Women's rights

23. Violence against women remains a major concern of women's rights organizations such as Kay Famm (a Creole expression meaning "Women's House"). Kay Famm's activities focus on four programmes: rehabilitation of women victims of violence; women and democracy; training; and self-financing of microprojects. In November 1997, 80 women's organizations of Haitian civil society established an International Tribunal for the Elimination of Violence against Haitian Women. The theme of the organizations involved was: "Let's remove the gags": no one will realize the extent of violence against women unless people talk about it. The progress of the "trial" has been a success from the point of view of the mobilization of women and of the press and has proved to be a turning point. For three days, the "Tribunal" sessions made society realize that the problem of women's rights is one of human rights, thereby sparking genuine awareness.

24. Without wishing to deny the Haitian Government's efforts on behalf of women, human rights activists are in unanimous agreement that much still remains to be done. Attention has been drawn to shortage of staff and equipment of the Ministry of Women's Affairs. Despite the existence of a protocol between the Ministry of Justice and the Ministry of Women's Affairs, there appears to have been no adequate judicial response to violence against women. There are serious flaws in police procedures and practices with respect to crimes of a sexual nature and to the protection of women victims of crimes of violence, who very often remain silent because of their lack of resources, mistrust of the judicial system and fear of retaliation. The forms of violence which affect women and, in particular, young girls, are domestic and sexual in nature; they also affect disabled women.

25. Although political violence disappeared from the Haitian scene with the return to democracy, it might be asked whether domestic violence, which is considered a private matter, does not have a political dimension. If violence is structural, it is no longer private, but rather political, insofar as men are supported by patriarchal logic. It should be noted that the decree of 8 October 1982 demolished the original male superiority affirmed in the Civil Code of 1826. Nevertheless, as the Kay Famm spokesperson has stressed, judges often blame a woman's rape on her "sex appeal" and wife-beating on the victim's "disobedience" or remarks to her husband. In other words, the victim is presumed to be at fault and responsible for the harm done to her. The expert welcomes the decision of her colleague, Radhika Coomaraswamy, Special Rapporteur on Violence against Women of the Commission on Human Rights, to travel on mission to Haiti in November 1998.

26. The independent expert recommends that article 262 of the Penal Code, which prohibits and penalizes abortion, should be amended. The proposed amendment consists of

authorizing abortion in cases of rape or incest or where the mother's health is at risk. He also recommended that the flaws in articles 285, 286 and 287 of the Penal Code, which make women and men subject to different penalties for adultery, should be corrected. Spouses are only partially equal in cases of adultery, since a husband's murder of a wife caught *in flagrante delicto* of adultery in the conjugal home is considered pardonable. Similarly, in the case of a woman convicted of adultery, the civil judge is authorized not only to grant a divorce but to sentence her to prison.

27. Legislators should also endeavour to recognize women's rights in cases of *plaçage* (Haitian common law marriage) and concubinage, which are widespread in rural areas. These legislative matters should be the subject of a comprehensive study of the compatibility of the provisions of Haitian legislation with the international instruments ratified by Haiti, particularly the Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará).

28. The independent expert recommends that a sensitivity course on the problem of violence against women should be included in training programmes for judges and lawyers. In reality, sensitivity to the rights of women as human rights should be incorporated into all levels of the educational system. The need for such a policy is demonstrated by the fact that violence against women is considered normal in Haitian society; for that reason, this type of violence has always been trivialized, even by State institutions.

29. The Government and the international community should support the actions of women's groups, which are breaking the silence with increasing frequency. Prosecutor's offices receive very many complaints by women victims of violence which, unfortunately, are not followed by investigations which might lead to the arrest and trial of those responsible for these crimes, which are an assault on human dignity. Under the de facto regime, women victims lived through tragedies which have had lasting effects.

VII. Rights of the child

30. The problem of *restaveks* (child servants) persists and will continue to do so until poverty is eliminated in Haiti. Even more alarming is the increase in the number of street children, particularly *restavek* girls.

31. According to a United Nations Children's Fund (UNICEF) study, the situation of street children is a direct result of the increasing poverty of rural dwellers, the exodus from rural areas and the resulting overpopulation of urban centres. It should be noted that this problem worsened significantly following the *coup d'état* of September 1991.

32. Although Haiti has ratified the Convention on the Rights of the Child, it has yet to harmonize it with domestic law. The independent expert has noted provisions of both the Civil and Penal Codes which violate the rights of the child.

33. At his meeting with Mr. Rodolfo Matarollo, Deputy Executive Director of MICIVIH, he gained a better understanding of parental authority in Haiti from the point of view of the rights of the child in the light of article 15 of the provisions on parental authority in the decree of 8 October 1982:

> "Art. 15 – The father and mother, or whoever has custody of the child, may commit him or her to a rehabilitation centre or, if there are sufficiently serious grounds, to a detention centre for a period not to exceed six months and to be determined by the dean and the Public Prosecutor's Office."

34. This provision is, to say the least, surprising and, indeed, so shocking that the question of its conformity with the Constitution and the international human rights treaties ratified by Haiti must be raised. How can a person be detained in violation of the principle of *nullum crimen sine lege*? This principle is set forth in articles 24.1 and 24.3 (a) of the Haitian Constitution. Furthermore, it has a force greater than that of legislation because it also derives from article 40.2 (a) of the Convention on the Rights of the Child: "States Parties shall, in particular, ensure that: (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed".

35. Mr. Matarollo has rightly stated that mere failure to observe the respect due to parents (article 314 of the Haitian Civil Code) is not sufficient to justify, in violation of the principle of *nullum crimen sine lege* (article 4 of the Haitian Criminal Code) either an act such as a security measure (committing a child to a rehabilitation centre) or recourse to detention. In addition to the principle of *nullum crimen sine lege*, the question of the guarantees of due process arises. Under article 15 of the decree of 8 October 1982, a child may remain in a detention centre for six months without benefit of the judicial guarantees recognized in articles 12 (2) and 37 (b) of the Convention on the Rights of the Child:

"... the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law" (art. 12, para. 2);

"States Parties shall ensure that: ... No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time" (art. 37 (b)).

36. Even more serious is the fact that article 15 is applicable even to an adult whose parents petition the court, which creates a doubly illegal situation. For example, in some cases individuals have been detained in the Gonaïves prison for periods of between two and nine months. The age of these detainees varies from 23 to 34. In some cases, they were placed in detention at their parents' request on various grounds, including behaviour which places the mother's life at risk, damage to the father's property, drug use and alcoholism.

37. One judge reportedly explained his actions by characterizing such detentions as "extrajudiciary", related to Haitian "custom" and intended to protect family members from the children since the police are unable to respond rapidly to urgent situations of domestic violence. It seems that some judges also fear for their own safety (retaliation by the family) if they refuse to send a child against whom a complaint has been lodged to prison and the latter subsequently commits an act of violence. In the opinion of the independent expert, nothing can justify this practice of illegal, arbitrary detention, and it is important for the Haitian State to repeal article 15 of the decree of 8 October 1982 without delay and for those held in detention under this practice, which is in violation of the Haitian Constitution and of international law, to be released.

VIII. Conclusion

38. There is no question that the situation of human rights in Haiti has improved, despite the threats that exist to the stability of the country. It is urgent for political figures to abandon their delaying tactics and to be willing to agree on their common goal of restoring the full dignity of the Haitian people. It is time for them to allow President Préval to exercise his Constitutional right to appoint a Prime Minister, for a Government to be rapidly established and for everyone to get to work. The Haitian people are tired; they yearn for justice and aspire to economic and social development. They have suffered for too long from the policies of politicians and are demanding to take their destiny into their own hands. But it is also important for the international community to increase its support in all areas, of which, in the view of the independent expert, the most important remains justice, which is the cornerstone of a State under the rule of law. The independent expert therefore regrets the decision of the Office of the High Commissioner for Human Rights to transfer its cooperation activities to MICIVIH. He received this news unofficially on his return from Haiti. The situation is all the more disturbing because he had informed the Minister of Justice of the return of the project manager, scheduled for 4 March 1998, and, at the latter's request, had asked the Minister to prepare for the holding of jointly agreed-upon human rights training seminars in late March and late June 1998. In any case, the independent expert invites the Office of the High Commissioner for Human Rights to consider the consequences of its decision. While it is true that MICIVIH is doing remarkable work in Haiti, it is important to bear in mind that its mission is different and that the limitation on the length of its mandate will make it impossible for it to undertake follow-up to the project. The visible presence of the Office of the High Commissioner is particularly desirable in view of the shortage of human resources in the various ministerial departments. President Préval has given strict orders that a considerable number of human rights treaties should be referred to the Haitian Parliament for ratification and that Haiti should submit its report to the Human Rights Committee as soon as possible. The day after his meeting with the independent expert, President Préval agreed to the former's request, supported by MICIVIH, for recognition of the competence of the Inter-American Court of Human Rights. In the face of such political will, it is important to demonstrate the international community's commitment to strengthening Haitian expertise in the field of human rights.